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PLR-134355-10

Date:

October 12, 2010

Legend:

Fund A =

Fund B =

Trust =

State =

Portfolio =

Date 1 =

Index =

a =

b =

c =

d =

e =

f =

Subsidiary A =

Subsidiary B =

Offshore =

Company =

Dear :

This is in response to a letter dated August 19, 2010, requesting rulings that (1) income earned from investments in the commodity-linked note described in this letter constitutes qualifying income to the Funds under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (“the Code”) and (2) income earned by the Funds from an investment in wholly-owned subsidiaries that qualify as controlled foreign corporations (“CFCs”) constitutes qualifying income to the Funds under section 851(b)(2) of the Internal Revenue Code.

Facts:

Fund A is a series of Trust, a business trust organized under the laws of State. Trust is registered as an open-end management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. (the “1940 Act”). Fund A invests in Portfolio. Portfolio is organized as a State business trust and is registered as an open-end management investment company under the 1940 Act.

Fund B is a business trust organized under the laws of State (together with Fund A, the “Funds”). Fund B will be registered as a closed-end management investment company under the 1940 Act. The Funds are accrual method taxpayers whose annual accounting period ends on Date 1.

Portfolio is treated as a partnership for federal income tax purposes. Each of the Funds intends to qualify as a regulated investment company under section 851 of the Code. Fund A invests or will invest its assets in Portfolio or other entities classified as partnerships for federal income tax purposes but is also authorized to participate in the commodity-linked note described below.

Commodities-Linked Note

The Funds and Portfolio intend to invest in a commodity-linked structured note having the following terms and conditions (the “Note”). The Note will be issued to the Funds or Portfolio at a face value of \$a. The Note’s payout will be determined with reference to Index. The term of the Note will be b months. The Funds and Portfolio will have the right to put the Note to the issuer at the calculated redemption price based upon the closing Index value as of the end of the next business day after notification to the issuer. If, on any day, Index falls to a level that is c% or less of the beginning Index value, the Note will “knockout” and automatically redeem at the calculated redemption price based upon the closing Index as of the end of the next business day.

The repayment obligation upon early redemption, knockout, or at maturity is calculated under a formula that provides for an amount equal to the face amount of the Note plus the product of the face amount, a leverage factor of d, and the adjusted Index return over the applicable period (which may be positive or negative). The adjusted Index return means the percentage change in the Index during the applicable period reduced by an interest rate of e and by certain fees, each expressed as a percentage. In addition, upon maturity, redemption, or knockout, the issuer will pay any accrued coupon interest at the coupon rate of f.

The Funds and Portfolio make the following representations with respect to the Note:

- (1) the issuer of the Note will receive payment for the Note substantially contemporaneously with the delivery of the Note;
- (2) while holding the Note, the Funds and Portfolio will not be required to make any additional payments to the issuer of the Note in addition to the purchase price paid for the Note, whether as margin, settlement payment, or otherwise, during the life of the Note or at maturity;
- (3) the issuer of the Note is not subject by the terms of the Note to mark-to-market margining requirements of the Commodities Exchange Act, 7 U.S.C. 2, as amended (the “CEA”); and
- (4) the Note is not marketed as a contract of sale of a commodity for future delivery (or option for future delivery on such a contract) subject to the CEA.

Controlled Foreign Corporation

Fund B and Portfolio each have formed or intend to form a wholly-owned subsidiary. Portfolio has formed Subsidiary A. Fund B intends to form Subsidiary B (together with Subsidiary A, the “Subsidiaries” and each is a “Subsidiary”). The Subsidiaries are or will be formed under the laws of Offshore, a non-U.S. jurisdiction. Each Subsidiary will be formed as a Company. A Company provides limited liability for

its shareholders. Each Subsidiary intends to file an election on Form 8832 to be treated as a corporation for federal income tax purposes under section 301.7701-3 of the Procedure and Administration Regulations.

Both Fund B and Portfolio represent that although Subsidiaries do not expect to be registered as investment companies under the 1940 Act, they will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related Securities and Exchange Commission guidance pertaining to asset coverage with respect to investments that would apply if Subsidiaries were registered under the 1940 Act.

Fund B and Portfolio each may invest a portion of their assets in a Subsidiary, subject to the asset diversification limitations set forth in section 851(b)(3) of the Code. The Subsidiaries are expected to invest primarily in commodities and commodities-related investments but may also invest in other securities. It is expected that all of the Subsidiaries' income will be subpart F income within the meaning of section 952 of the Code.

Law and Analysis:

Section 851(b)(2) provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as –

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to [the RIC's] business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as –

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general,

any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Section 2(f)(1) of the CEA provides that the CEA is not applicable to a hybrid instrument that is predominantly a security. Section 2(f)(2) of the CEA provides that a hybrid instrument shall be considered to be predominantly a security if –

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with the delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the CEA.

Section 2(f)(3) of the CEA provides that for purposes of section 2(f)(2)(C) of the CEA, mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation’s taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a

foreign corporation. Fund B and Portfolio each represent that it will own 100 percent of the voting power of the stock of its respective Subsidiary. Fund B and Portfolio each is a United States person. Fund B and Portfolio therefore represent that the Subsidiaries will qualify as CFCs under these provisions.

Section 951(a)(1) provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the sum of the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Under section 954(c)(1), foreign personal holding company income includes (among other things): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Subsidiaries' income from their investments in commodities and commodity-linked instruments may generate subpart F income. Fund B and Portfolio therefore represent that they will include in income their respective Subsidiary's subpart F income for the taxable year in accordance with section 951.

Conclusion

Based on the facts as represented, we rule that income and gain arising from the Note constitutes qualifying income to the Funds under section 851(b)(2) of the Code. We further rule that subpart F income of the Subsidiaries attributable to the Funds is income derived with respect to each Fund's business of investing in the stock of its Subsidiary and thus constitutes qualifying income under section 851(b)(2).

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Diana Imholtz _____
Diana Imholtz
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions and Products)